

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CODY OAKLEY,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:22-cv-126
)	District Judge Stephanie L. Haines
CHRISTIAN M. SMITH,)	Magistrate Judge Keith A. Pesto
)	
Defendant.)	
)	

MEMORANDUM OPINION

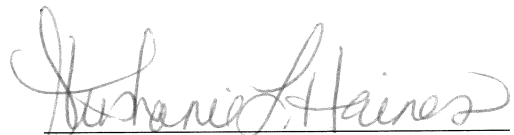
This is a civil rights case brought by Plaintiff Cody Oakley (“Plaintiff”), an inmate at Cambria County Prison. This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S. C. § 636, and Local Civil Rule 72.D.

On September 7, 2022, Magistrate Judge Pesto issued a Report and Recommendation (ECF No. 7) recommending that the Court dismiss Plaintiff’s Complaint (ECF No. 4) without prejudice for failing to state a cognizable claim against the sole defendant named in this matter, Defendant Christian M. Smith, Warden of Cambria County Prison. Plaintiff was advised that, as a non-ECF user, his objections to the Report and Recommendation (ECF No. 7) were due on September 26, 2022. Plaintiff did not file objections, and the time to do so has passed.

Upon review of the record and the Report and Recommendation (ECF No. 7) under the applicable “reasoned consideration” standard, *see EEOC v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of Magistrate Judge Pesto in this matter, as amended herein.

Magistrate Judge Pesto correctly states that Plaintiff fails to explain what part Defendant played in the alleged violation of his constitutional rights. The Court also agrees with Magistrate Judge Pesto's determination that it is not clear that amendment would be futile at this time, and the Court will therefore grant Plaintiff leave to file an amended complaint. *See Grayson v. Mayview State Hosp.* 293 F. 3d 103, 114 (3d Cir. 2002) (holding that, under 28 U.S.C. §1915, a court must grant a plaintiff leave to amend his complaint unless amendment would be inequitable or futile). Though Plaintiff failed to amend his claims within the time to do so under Magistrate Judge Pesto's Report and Recommendation (ECF No. 7), the Court will grant Plaintiff additional time to amend his claims and will order Plaintiff to file his amended complaint on or before November 30, 2022. Failure to file an amended complaint may result in the dismissal of Plaintiff's claims with prejudice. The Magistrate Judge's Report and Recommendation (ECF No. 7) will be adopted as the Opinion of the District Court. An appropriate Order will follow.

DATE:


Stephanie L. Haines
United States District Judge